

Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (Text with EEA relevance)

PART I

**FRAMEWORK (GENERAL RULES FOR THE ORGANISATION OF THE SECTOR)**

TITLE IV

**INTERNAL MARKET PROCEDURES**

*CHAPTER I*

*Article 32*

**Consolidating the internal market for electronic communications**

1 In carrying out their tasks under this Directive, national regulatory authorities shall take the utmost account of the objectives set out in Article 3.

2 National regulatory authorities shall contribute to the development of the internal market by working with each other and with the Commission and BEREC, in a transparent manner, in order to ensure the consistent application, in all Member States, of this Directive. To this end, they shall, in particular, work with the Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the market.

3 Except where otherwise provided in recommendations or guidelines adopted pursuant to Article 34 upon completion of the public consultation, if required under Article 23, where a national regulatory authority intends to take a measure which:

- a falls within the scope of Article 61, 64, 67, 68 or 83; and
- b would affect trade between Member States,

it shall publish the draft measure and communicate it to the Commission, to BEREC, and to the national regulatory authorities in other Member States, at the same time, stating the reasons for the measure, in accordance with Article 20(3). National regulatory authorities, BEREC and the Commission may comment on that draft measure within one month. The one-month period shall not be extended.

4 The draft measure referred to in paragraph 3 of this Article shall not be adopted for a further two months, where that measure aims to:

- a define a relevant market which is different from those defined in the recommendation referred to in Article 64(1); or

[<sup>X</sup>b decide whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 67(3) or (4);]

and it would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the internal market or if it has serious doubts as to its compatibility with Union law and in particular the objectives referred to in Article 3. That two-month period

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shall not be extended. The Commission shall inform BEREC and national regulatory authorities of its reservations in such a case and simultaneously make them public.

5 BEREC shall publish an opinion on the Commission's reservations referred to in paragraph 4, indicating whether it considers that the draft measure should be maintained, amended or withdrawn and shall, where appropriate, provide specific proposals to that end.

6 Within the two-month period referred to in paragraph 4, the Commission may either:

- a take a decision requiring the national regulatory authority concerned to withdraw the draft measure; or
- b take a decision to lift its reservations referred to in paragraph 4.

The Commission shall take utmost account of the opinion of BEREC before taking a decision.

Decisions referred to in point (a) of the first subparagraph shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure is not to be adopted, together with specific proposals for amending it.

7 Where the Commission has adopted a decision in accordance with point (a) of the first subparagraph of paragraph 6 of this Article requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure within six months of the date of the Commission's decision. Where the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with Article 23, and shall notify the amended draft measure to the Commission in accordance with paragraph 3 of this Article.

8 The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, of BEREC and of the Commission and may, except in the cases covered by paragraph 4 and point (a) of paragraph 6, adopt the resulting draft measure and shall, where it does so, communicate it to the Commission.

9 The national regulatory authority shall communicate to the Commission and to BEREC all adopted final measures which fall under points (a) and (b) of paragraph 3.

10 In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, in order to safeguard competition and protect the interests of users, by way of derogation from the procedure set out in paragraphs 3 and 4, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission, to the other national regulatory authorities, and to BEREC. A decision of the national regulatory authority to render such measures permanent or extend the period for which they are applicable shall be subject to paragraphs 3 and 4.

11 A national regulatory authority may withdraw a draft measure at any time.

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#### **Editorial Information**

- X1** Substituted by [Corrigendum to Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Official Journal of the European Union L 321 of 17 December 2018\)](#).

### Article 33

#### **Procedure for the consistent application of remedies**

1 Where an intended measure covered by Article 32(3) aims to impose, amend or withdraw an obligation on an undertaking in application of Article 61 or 67 in conjunction with Articles 69 to 76 and Article 83, the Commission may, within the one-month period referred to in Article 32(3), notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the internal market or of its serious doubts as to its compatibility with Union law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.

In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission, BEREC or any other national regulatory authority.

2 Within the three-month period referred to in paragraph 1 of this Article, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective measure in light of the objectives laid down in Article 3, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

3 Within six weeks from the beginning of the three-month period referred to in paragraph 1, BEREC shall issue an opinion on the Commission's notification referred to in paragraph 1, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. That opinion shall provide reasons and be made public.

4 If in its opinion, BEREC shares the serious doubts of the Commission, it shall cooperate closely with the national regulatory authority concerned to identify the most appropriate and effective measure. Before the end of the three-month period referred to in paragraph 1, the national regulatory authority may either:

- a amend or withdraw its draft measure taking utmost account of the Commission's notification referred to in paragraph 1 and of BEREC's opinion; or
- b maintain its draft measure.

5 The Commission may, within one month following the end of the three-month period referred to in paragraph 1 and taking utmost account of the opinion of BEREC, if any:

- a issue a recommendation requiring the national regulatory authority concerned to amend or withdraw the draft measure, including specific proposals to that end and providing reasons for its recommendation, in particular where BEREC does not share the Commission's serious doubts;
- b take a decision to lift its reservations indicated in accordance with paragraph 1; or
- c for draft measures falling under the second subparagraph of Article 61(3) or under Article 76(2), take a decision requiring the national regulatory authority concerned to withdraw the draft measure, where BEREC shares the serious doubts of the Commission, accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted, together with specific proposals for amending the draft measure, subject to the procedure referred to in Article 32(7), which shall apply *mutatis mutandis*.

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6 Within one month of the Commission issuing the recommendation in accordance with point (a) of paragraph 5 or lifting its reservations in accordance with point (b) of paragraph 5, the national regulatory authority concerned shall communicate to the Commission and to BEREC the adopted final measure.

That period may be extended to allow the national regulatory authority to undertake a public consultation in accordance with Article 23.

7 Where the national regulatory authority decides not to amend or withdraw the draft measure on the basis of the recommendation issued under point (a) of paragraph 5, it shall provide reasons.

8 The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure.

#### *Article 34*

#### **Implementing provisions**

After public consultation and after consulting the national regulatory authorities and taking utmost account of the opinion of BEREC, the Commission may adopt recommendations or guidelines in relation to Article 32 that lay down the form, content and level of detail to be given in the notifications required in accordance with Article 32(3), the circumstances in which notifications would not be required, and the calculation of the time-limits.